

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| PREMIER FIXTURES, LLC, |) | |
| |) | Case No. 2:16-cv-03975 |
| <i>Plaintiff,</i> |) | (LDW)(AKT) |
| |) | |
| v. |) | |
| |) | |
| EVOLUTION FIXTURES, LLC, JOSE L. |) | |
| TELLEZ, J. ANTONIO TELLEZ, TKL |) | |
| ASSOCIATES, INC., PAUL |) | |
| SAUDINO and HARRY MAYORS, |) | |
| |) | |
| <i>Defendants.</i> |) | |
| ----- | X | |

**DECLARATION OF WILLIAM MOYLAN IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, WILLIAM MOYLAN, declare as follows:

1. I am Senior Director, Cyber Security and Investigations of Kroll, Inc. ("Kroll"). I have personal knowledge of the matters set forth herein, and, if called upon, can and would testify concerning the same. Kroll is a corporate investigations firm based in New York, New York, which specializes, among other things, in computer forensics and investigations.

2. I have been a practitioner in the field of computer forensic analysis and high technology investigation for the past twenty years. In that time, I have conducted hundreds of investigations involving computer data as evidence and have personally examined or directed the examination of hundreds of computer systems. I have in my experience investigated cases involving the theft of intellectual property in the form of computer data.

3. My qualifications in the field of computer forensics include a Master of Science degree in Forensic Computing and Cyber Crime Investigation from University College Dublin,

Ireland. My certifications include the Certified Forensic Computer Examiner (CFCE) of the International Association of Computer Investigative Specialists, the Digital Forensics Certified Practitioner (DFCP) of the Digital Forensics Certification Board, and the Certified Information Systems Security Professional (CISSP) of the International Information Systems Security Certification Consortium (ISC2). I have received more than five hundred hours of training in the area of computer forensics.

4. Kroll was engaged to help determine whether intellectual property of Premier Fixtures, LLC had been expropriated, disclosed and/or used by former employees of Premier, and to further determine, to the extent possible, if the computer systems or networks of Premier had been accessed without authorization by those former employees. So far, I have conducted a preliminary investigation and this declaration reports on some of the results as to what I have found.

5. As part of this investigation, I analyzed a .pdf file ("Mavis Document"), which had been attached to an email apparently sent from Jose A. Tellez at Evolution Store Fixtures to Xiamen Mavis Display Fixtures Co., Ltd. ("Mavis"), a Chinese vendor and copied to Tony Tellez. This file contained 9 pages, each marked with Premier's logo. A true and correct copy of this .pdf Mavis Document, with Premier's confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 1.

6. I compared the Mavis Document with the original 'Final' copy as preserved by Premier in the drawings repository on their file server ("Premier Final Document"). A true and correct copy of the Premier Final Document, with Premier's confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 2.

7. I identified through visual inspection several differences between the Mavis Document and the Premier Final Document. These differences included:

- a. The “properties” in both documents record the creation date as April 14, 2014 at 3:23:25PM by a user identified with the user name “jconlon.” However, the Premier Final Document shows the last modified date as April 24, 2014, while the Mavis Document shows the last modified date as April 11, 2016 at 8:02:56 PM. A true and correct copy of an image of the “properties” of the Mavis Document, with Premier’s confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 3.
- b. On page one of the Premier Final Document, there is a green background comment box in the upper right-hand corner with the caption “APPROVED By Jose Tellez at 2:18 pm, Apr 24, 2014”. Page one of the Mavis Document does not contain the box or the caption.
- c. On page nine of the Premier Final Document, which is titled “Sign Holder Channel,” there are drawings depicting several angles of a sign holder as part of the overall design. There is no logo present in the sign holder.
- d. By contrast, on page nine of Mavis Document, the logo for Wilson Sporting Goods, a lowercase script “W” on a red background, is seen in the “Front View” of the sign holder along with the Text “Customer Logo- Silk Screen” in red, as well as two red arrows pointing to the top and left side of the square logo element. The logo, red text, and arrows are unique elements in the document in that they can be highlighted and become outlined in blue, with resize and relocate icons appearing. This indicates that the logo, text, and

arrows were added after the Premier Final Document was created on April 14, 2014 by jconlon. These new elements represent an additional “layer” added to the document after the finalization of the file by Premier.

8. The “Comments List” of the Premier Final Document shows one comment: “Approved - jtellez 4/24/2014 2:18:01.”

9. The “Comments List” of the Mavis Document shows 3 comments:

a. “jtellez – Page 9 4/11/2016 8:01:39PM.” The comment box appears on page nine of the Mavis Document in the form of a red-colored “Stamp.” At the top of the comment box is “jtellez” followed by the date and time. This indicates that the author of the comment is recorded as user “jtellez.” The comment box points to the Wilson logo insertion on page 9. A true and correct copy of an image of this comment box, with Premier’s confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 4.

b. “jtellez – Page 9 4/11/2016 8:02:45PM.” The comment icon appears on page nine of the Mavis Document in the form of a red-colored arrow pointing to the left side of the Wilson logo insertion on page 9. The author of this comment is recorded as “jtellez.”

c. “jtellez – Page 9 4/11/2016 8:02:51PM.” The comment icon appears on page nine of the Mavis Document in the form of a red-colored arrow pointing to the top of the Wilson logo insertion on page 9. The author of this comment is recorded as “jtellez.”

10. The “Comments List” of the Mavis Document does not contain the approval comment found on page 1 in the Premier Final Document. A true and correct copy of an image

of this Comments List, with Premier's confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 5.

11. I also analyzed as part of my investigation a desktop computer system that had been used by Paul Saudino during his employment at Premier.

12. On Paul Saudino's desktop computer system, I discovered that two "link" or "shortcut" files were created on April 11, 2016 when accessing the "D:\Personal Folders" location on that system. The "link" files are for two files: "DSG-MBHLDR-Wilson.psd" and "DSG-MBHLDR-wilson-2.psd." PSD format files are the standard format of files created using the "Adobe Photoshop" program, defined as a "layered image file." This format is also one of the formats used for output of the "Solidworks" design program used by Premier. These links indicate that Paul Saudino accessed those two PSD files on the D: drive of his desktop system on April 11, 2016, and the files on the D: drive may have been created at any time prior to the April 11, 2016 creation of the link file. That "D:\Personal Folders" folder no longer exists on the Paul Saudino hard drive.

13. I also discovered a link (or Windows shortcut) file on Paul Saudino's desktop computer system, which contained a target file name DSG-MBHLDR.SLDASM. The DSG-MBHLDR.SLDASM file was created on the desktop system on April 12, 2016 at 02:02:12 a.m. UTC (or April 11, 2016 at 10:02:12 EST). SLDASM format files are files created by the design program "Solidworks" used by Premier.

14. I also discovered a deleted email message from PSaudino@premierfixtures.com to PaulSaudino@gmail.com. This deleted email message had been sent April 12, 2016 at 02:54:37 a.m. UTC (or April 11, 2016 at 10:54:37 p.m. EST). This deleted message contained no text in the body of the email but contained four attached files. A true and correct copy of the

deleted email message and attachments, with Premier's confidential and proprietary trade secrets redacted, is attached hereto as Exhibit 6. The four files attached to the deleted email were:

DSGMBHLDR.PDF
DSGMBHLDR-L.PDF
Wilson.ai
Wilson.pdf

15. The two files titled "Wilson" attached to the deleted email message contain the red Wilson Sporting Goods logo, with the logo in the Wilson.ai being a smaller physical size logo. The two files that contain the title DSGMBHLDR contain elements of a drawing for a ball holder with a bracket and sign holder. These elements appear to have been extracted from the Premier drawings in the Premier Final Document, but do not contain any Premier logos or markings.

16. I have been conducting forensic analysis to recover the removed files that had been contained within "D:\Personal Folders" on Paul Saudino's desktop system, if possible, but have not yet been able to recover them.

17. Additionally in my analysis of Paul Saudino's desktop system, I discovered an email from hmayors@premierfixtures.com sent to psaudino@premierfixtures.com on March 31, 2016 at 2:26 p.m. This March 31, 2016 email contains internal Premier information about Stafford Computer Associates ("Stafford"), the computer company that hosts Premier's servers. In this email, Hank Mayors shares with Saudino Stafford's Hosting Services Agreement with Premier and other information including pricing information.

18. This March 31, 2016 email contained three attached files, including the following:

- a. An email dated March 1, 2016 from hmayors@premierfixtures.com to mrusso@premierfixtures.com, and copying mhornberger@premierfixtures.com, with the subject "Epicor10 dell server."
- b. An email dated March 22, 2016 from hmayors@premierfixtures.com to mrusso@premierfixtures.com and copying mhornberger@premierfixtures.com and aapplbaum@premierfixtures.com with the subject "RE: Server Warranties," and containing Stafford's Hosting Services Agreement as a PDF attachment.
- c. A .JPG image, with the file name "e10 server info.JPG," which shows warranty details for a Dell PowerEdge R630 server.

19. A true and correct copy of the cover email with Premier's confidential and proprietary trade secrets redacted is attached hereto as Exhibit 7.

20. As part of my investigation, I also investigated the location and registration of Evolution's websites. I discovered that on October 11, 2015, a third party registered two URL domains for Evolution, one for www.evolutionfixtures.com, the other for www.evolutionstorefixtures.com. The www.evolutionfixtures.com website remains in operation presently. Both of these Evolution Fixtures URL domains were registered to Perfect Privacy LLC. Perfect Privacy was listed as the registrant of the Evolution websites until July 13, 2016.

21. The IP addresses for the Evolution URL domains make clear that the Evolution websites were initially hosted by a large public company called Network Solutions that specializes in server and email hosting in addition to being a domain name registrar. Evolution's current website was hosted with Network Solutions from October 11, 2015 until April 2, 2016.

22. On April 2, 2016, the hosting address of the www.evolutionfixtures.com website was moved to an address assigned to Stafford Associates Computer Specialists, Inc. of Setauket, New York.

23. On or about Thursday July 7, 2016, the hosting of the www.evolutionfixtures.com website was moved from the Stafford address to a different hosting location under the control of Rackspace Hosting.

24. On Monday July 13, 2016, the domain owner of and administration information of the www.evolutionfixtures.com website was changed from Perfect Privacy to Jose A. Tellez. The record for www.evolutionstorefixtures.com remains with Perfect Privacy as the registrant and administrator and the hosting address currently recorded as the Stafford Associates' address. The www.evolutionstorefixtures.com site is not currently operable, however the URL address does currently resolve in the Domain Name system (DNS) to the Stafford Associates address.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 17th, 2016, in the County of Nassau, state of New York.

A handwritten signature in black ink, reading "William F. Moylan", written in a cursive style. The signature is positioned above a horizontal line.

William F. Moylan